Justice Bradley

Mr Justice Blatchford

SUPREME COURT OF THE UNITED STATES.

No. 328.

THE PEOPLE OF THE STATE OF NEW YORK, EX REL. THE BANK OF AMERICA, PLAINTIFFS IN ERROR,

vs.

THE COMMISSIONERS OF TAXES AND ASSESSMENTS FOR THE CITY AND COUNTY OF NEW YORK.

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF NEW YORK.

GOVERNMENT PRINTING OFFICE.

Mr Justice Miller

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1 UNITED STATES OF AMERICA:

The President of the United States to the honorable the court of appeals of the State of New York, greeting:

Because in the record and proceedings, as also in the rendition of judgment of a plea which is in the said court of appeals before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between the people of the State of New York, on the relation of the president, directors, and company of the Bank of America, in the city of New York, against the board of commissioners of taxes and assessments of the city and county of New York, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to
2 the constitution, treaties, or laws of the United States, and the decision was in favor of such validity; or wherein was drawn in question the construction of a clause of the constitution, or of a treaty, or statute of, or commission held under, the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said the president, directors, and company of the Bank of America, as by their complaint appears, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment therein be given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done, to correct that error, what
3 of right and according to the laws and customs of the United States should be done.

Witness the Honorable James M. Wayne, senior justice of the said Supreme Court, the 30th day of November, in the year of our Lord one thousand eight hundred and sixty-four.

KENNETH G. WHITE,
Clerk of the circuit court of the United States,
Southern District of New York.

C. E. STRONG,
Att'y for Pl'ffs in Error.

Allowed by— S. NELSON.

4 The answer of the judges of the court of appeals of the State of New York, in the within suit named, doth certify, under the seal of our said court, to the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, and send the record whereof [SEAL.] mention in said writ is made, with all things touching, or in any wise concerning, the same, as appears in a certain schedule to this writ annexed, as within it is commanded.

By the court:

COR'S TEN BROECK, *Dep. Clk.*

5 SUPREME COURT,
City and County of New York:

THE PEOPLE, &c., *ex rel.* THE PRESIDENT, Directors, and Company of the Bank of America,
against
THE BOARD OF COMMISSIONERS OF TAXES and Assessments, of the city and county of New York.

To the supreme court of the State of New York:

The petition of the president, directors, and company of the Bank of America, respectfully shows:

That your petitioners are an association, formed, existing, and transacting business in the city of New York, under and pursuant to the provisions of the act entitled "An act to authorize the business of banking," passed April 18, 1838, and the various acts supplementary thereto and amendatory thereof; that the capital stock of the said association is three millions of dollars; that the full amount of i s capital stock is invested in the stocks, bonds, and other securities, which were, on the 28th day of April, 1863, and have ever since been, and now are, held by the said association; that of the said capital stock the sum of twelve thousand one hundred dollars are held by various literary and charitable institutions; that it hath invested in real
6 estate the sum of one hundred and sixty thousand dollars, and that it hath invested in United States stocks the sum of eight millions nine hundred thousand nine hundred dollars; that in the month of March now last past, your petitioners presented to the board of commissioners of taxes and assessments of the city and county of New York, a statement, of which a copy is hereto annexed, marked "Schedule A."

Your petitioners further show that they are not liable to taxation on any part of the said capital stock of three million dollars, which is held by literary and charitable institutions, or which is invested in United States stock as aforesaid, but are by law expressly exempt from such taxation on the same, or any part thereof; that your petitioners are informed and believe that the said board of commissioners of taxes and assessments have assessed, and caused to be inserted in the tax and assessment roll for the current year, the sum of two million eight hundred and twenty-nine thousand one hundred and forty dollars ($2,829,140) as the amount of personal property assessed to your petitioners, and have determined that they shall be taxed on the amount so assessed, notwithstanding that your petitioners have duly applied to the said commissioners to correct such assessment and taxation, and to strike the said sum of two million eight hundred and twenty-nine thousand one hundred and forty dollars from the said tax and assessment roll, which the said commissioners have not done, and have refused to do. And on the first day of July, 1863, your petitioners caused to be delivered to the said commissioners a certain written protest and objection, of which the annexed is a copy, marked "Schedule B."

Your petitioners therefore pray that a writ of certiorari may be issued and allowed by this court, directed to the said commissioners, requiring them to certify and return to this court all and singular their proceedings in the premises, and the documents and papers before them touching or concerning the same, and that the said decision and action of the said commissioners may be reviewed and corrected on the merits by this honorable court, and that the aforesaid errors of said commissioners may be corrected

7 according to law, or that your petitioners may have such other or further relief in the premises as may be meet.

And your petitioners will ever pray, &c.

The Bank of America, by—

WM. L. JENKINS, *Cashier.*

Dated N. Y., July 1, 1863.

G. T. STRONG & E. G. DRAKE, Jr.,
Att'ys for P'trns.

CITY AND COUNTY OF NEW YORK, *ss:*

William L. Jenkins, of the said city, being duly affirmed, doth depose and say that he is the cashier of the Bank of America, in the foregoing petition named, and that the several matters and things stated in the said petition are true of his own knowledge, except as to those matters which are therein stated to be on information and belief, and that as to those matters he believes the said petition to be true.

WM. L. JENKINS.

Affirmed before me this 1st day of July, 1863.

J. S. MERRIAM,
Notary Public, N. Y.

[U. S. Rev. stamp, c'rtif, cancelled.]

A.

NEW YORK, *January* 12, 1863.

Statement made and delivered to the commissioners of taxes and assessments of the city and county of New York, for and in behalf of the Bank of America, in the city of New York, in pursuance of the provisions of title IV, chapter XIII, part I, of the Revised Statutes of the State of New York, and of the acts amendatory thereof, chap. 654 Laws of 1853, and chapters 456 and 536 Laws of 1857:

8 1st. Real estate owned by the said Bank of America, viz: the banking-house and lot of ground, situate in the city of New York—sum actually paid therefor originally $220,000, present $160,000.

2d. Capital stock of the said Bank of America, actually paid in and secured to be paid in, $3,000,000.

Excepting therefrom amount paid for real estate, as above stated, $160,000; amount of the said capital stock held by the State, none; amount of the capital stock held by Life Savings Benevolent Association, St. Andrew's Society, N. Y. Typographical Society, Grace Church, Jamaica, L. I., Presbyterian Board for Foreign Missions, $12,100, being incorporated institutions.

3d. Amount of surplus profits or reserved funds, exceeding ten per cent. of the capital of this bank, $1,239 64.

This bank held and owned at the date above named, stocks, bonds, and other securities of the United States to the amount of $3,900,900, as per schedule annexed, and claims exemption from taxation on its capital to that amount.

4th. The banking office, or the place of transacting the financial business of the said Bank of America, is situated in the first ward of the city of New York, at No. 46 West street.

Dated January 12, 1863.

CITY OF NEW YORK, *ss:*

I, Wm. L. Jenkins, cashier of the Bank of America, being duly affirmed,

do hereby certify and declare that, to the best of my knowledge and belief, the foregoing statement was in all respects just and true at the date
9 thereof, to and of which date the statement is made, as required by the tax commissioners.

WM. L. JENKINS, *Cashier.*

Affirmed before me this 28th day of April, 1863.

FREDERIC BULL,
Notary Public.

CITY AND COUNTY OF NEW YORK, *ss:*

I, Wm. L. Jenkins, cashier of the Bank of America, being duly sworn, depose and say that the said Bank of America held and owned on the 12th day of January, A. D. 1863, stocks, bonds, and other securities of the United States to the amount of $8,900,900, the same being exempt from taxation "by or under State authority," and that the total value of all other personal estate of the said Bank of America at that date did not exceed the amount of debts due from said Bank of America. I therefore respectfully claim on behalf of said Bank of America, and as the representative thereof, that it had no taxable personal estate over and above the amount of debts due from said Bank of America, (excluding property exempt by law from taxation,) and that no tax can by law be laid on said bank save as to its real estate.

WM. L. JENKINS, *Cashier.*

Affirmed before me this 28th day of April, A. D. 1863.

FREDERIC BULL,
Notary Public.

10 *Schedule.*

Capital stock	$3,000,000
Real estate	160,000

United States securities.

5 per cent. stock of 1871	$100,000
5 " " " 1874	20,000
6 " " " 1881	571,000
6 " bonds of 1881	98,000
7 3-10 treasury notes, Aug. 19	173,900
7 3-10 " " Oct. 1	2,046,000
5 per cent. loan, certificates of deposit, J. J. Cisco, asst. treas'r	2,982,000
4 per cent. " " " " "	1,100,000
6 per cent. U. S. certificates of indebtedness	1,810,000
	8,900,900

Charitable institutions, &c.

Life Savings Benevolent Associa'n, 45 sh's; St. Andrew's Society, 42 sh's; N. Y. Typographical Society, 5 sh's; Grace Church, Jamaica, L. I., 14 sh's; Presbyterian Board of Foreign Missions, 15 sh's. Total, 121 shares—$12, 100.

Schedule B.

To the board of commissioners of taxes and assessments:

11 The Bank of America hereby objects to the assessment of said bank at $2,829,140 of personal estate in the assessment roll of the year 1863, and alleges that it is erroneous.

Said bank claims that it is wholly exempt from assessment and taxation by reason of said bank's capital being invested in stocks, bonds, and other securities of the United States, in manner stated in the statement and affidavit of the cashier of said bank, delivered to your board on or about the 28th day of April, 1863.

Said bank therefore protests against said assessment, and respectfully asks your board to correct the said assessment roll by cancelling the assessment of said bank.

Said bank hereby offers to produce before your board the president, cashier, and representatives of said bank, for further examination, on oath, touching said assessment.

N. Y., June 30th, 1863.

JAS. PUNNETT, *President.*
W. D. JENKINS, *Cashier.*

12 The people of the State of New York to the board of commissioners of taxes and assessments of the city and county of New York:

(U. S. revenue stamp, 50 cts., cancelled.)

We being willing, for certain causes, to be certified of the proceedings, decision, and action had by and before you in the matter of the assessment for taxation of the Bank of America, in the city of New York, by you lately made, do command you that all and singular the said assessment made by you for the year 1863, and all and singular the documents and papers relating thereto, and your decision and action thereon, with all things touching or concerning the said assessment as fully and entirely as the same remain with you, you send to our supreme court of judicature at the City Hall, in the city of New York, on the third Monday of September next, at 10 o'clock a. m. on that day, together with this writ, to the end that your decision and action in the matter of said assessment may be reviewed and corrected on the merits by our said court, and that we may further cause to be done thereupon what of right shall be fit to be done.

Witness Josiah Sutherland, presiding justice of our said [N. Y. SEAL.] court, at the City Hall, in the city of New York, the 1st day July, A. D. 1863.

By the court:

H. W. GENET, *Clerk.*

G. T. STRONG and E. G. DRAKE, Jr.,
Relators' att'ys, 68 Wall st., N. Y.

13 To the supreme court of the State of New York:

We, the undersigned, commissioners of taxes and assessments for the city and county of New York, pursuant to a certain writ of certiorari delivered to us and hereto annexed, do certify and return:

That the deputy tax commissioners did, under our direction as by law required, assess the actual value of the capital stock of the Bank of America in the city of New York, together with its surplus profits or reserved funds exceeding ten per cent. of its capital, after deducting the assessed value of its real estate and all shares of stock in other corporations actually owned by such company which are liable to taxation upon their capital stock under

the laws of the State, and amount of stock held by charitable and literary institutions, at the sum of two millions eight hundred and twenty-nine thousand one hundred and forty dollars ($2,829,140) and that such assessed valuation was duly entered at detail in the books provided for that purpose and kept in the office of the said commissioners, called "The Annual Record of the Assessed Valuation of Real and Personal Estate."

That notice of such assessment was given to said bank; that thereupon the officers of said bank did appear before us, and did complain of said assessment, and did present to us certain statements in writing, of which a true copy is hereunto annexed, marked A, B.

That thereupon we, the said commissioners, did examine into the said complaint, and in our judgment the said assessment was and is correct, and we determined that the actual value of the said capital stock, after making the aforesaid deduction, was two millions eight hundred and twenty-nine thousand one hundred and forty dollars, which we believed and now believe to be just, and such assessment stands in the said Annual Record of the Assessed Valuation of Real and personal Estate as an assessment of that amount against the said bank.

We further state that our decision thereon was declared, and such
14 reduction made, within thirty days after the said application was made to us, as aforesaid, and prior to the first day of May, A. D. 1863. That said assessment so made, and our action thereupon, were under and in pursuance of the several laws of the State of New York relating to the assessment and collection of taxes in the city and county of New York.

And we do further certify and return that the said the Bank of America, in the city of New York, is, and for several years last past has been, a banking corporation, created under and by the laws of the State of New York, and not otherwise; and under and in pursuance of such laws enjoys, and has during all said time enjoyed, certain privileges, and is and has been subject to certain burdens; and among other burdens is, and was at the time of such assessment, subject to assessments and taxation upon the value of its capital stock, without regard to the fact that such capital stock, or any portion of it, might be invested in the public stocks, debts, or bonds of the United States; and that such assessment was not made upon the public stocks or bonds of the United States, but was made, pursuant to the laws of said State of New York, upon the capital stock of said bank, estimated at its just value after making the exceptions and deductions required by the statutes of said State.

In testimony whereof, we, said commissioners, have respectively to these presents subscribed our names and affixed our seals, at the city of New York, this 21st day of September, 1863.

A. J. WILLIAMSON. [L. S.]
JON. W. ALLEN. [L. S.]
J. W. BROWN. [L. S.]

15 At a general term of the supreme court of the State of New York, at the city of New York, on the 30th day of November, 1863.

Present: Hon. Josiah Sutherland, P. J.; Hon. William H. Leonard and Hon. William F. Allen, justices.

THE PEOPLE, *ex rel.* The President, Directors & Co. of the Bank of America,
agst.
THE COMMISSIONERS OF TAXES AND ASSESSMENTS of the city and county of New York.

This matter having been brought to a hearing at a general term of this court, in the city of New York, on the 28th day of September, 1863, upon the petition, certiorari, and return thereto, and counsel for the relators and

for the board of commissioners of taxes and assessments of the city and county of New York, named in said petition, writ, and proceedings, having been heard, and the court having reviewed upon the merits the decision and action of said commissioners, now, on motion of John E. Develin, of counsel for said commissioners, it is ordered, adjudged, and decreed that the proceedings and determinations of the said commissioners in the assessment of the said relators be, and the same hereby are, in all respects confirmed and held valid. And it is further adjudged that the said commissioners recover from the above-named relators their costs and disbursements, to be taxed by the clerk of the court.

Therefore, it is considered and adjudged that the said proceedings and determinations of the said commissioners, in the assessment of the said relators, be, and the same hereby are, in all things confirmed and held valid. And it is further considered and adjudged that the said commissioners of taxes and assessments for the city and county of New York recover from the said the president, directors, and company of the Bank of America the sum of forty-six dollars and twenty-seven cents for their costs and disbursements in this matter.

(Signed) H. W. GENET, *Clerk.*

Endorsed: Filed December 24th, 1863, at 11 o'clock and 35 m.

16 Supreme court.

CITY AND COUNTY OF NEW YORK:

THE PEOPLE, &c., *ex rel.* The President, Directors, and Company of the Bank of America, appellants, *agst.*
THE BOARD OF COMMISSIONERS OF TAXES AND ASSESSMENTS OF THE CITY AND COUNTY OF NEW YORK, respondents.

SIR: You will please to take notice that the above-named appellants hereby appeal to the court of appeals from the order of the general term of this court, in the first judicial district, made on the 30th day of November now last past, and from the judgment entered thereon on the 24th day of December instant, and from the whole of the said judgment and order.

Dated New York, December 24th, 1863.

Yours, &c.,
G. T. STRONG and E. G. DRAKE, JR.,
Att'ys of App'lts.

To J. E DEVELIN, Esq.,
Respondents' Att'y.
H. W. GENET, Esq.,
Clerk of the city and county of New York.

171 STATE OF NEW YORK,
City and county of New York, ss:

I, Henry W. Genet, clerk of the supreme court of said State in and for said city and county, do hereby certify that the preceding consists of certified copies of the judgment roll and notice of appeal, the order appealed from, and the papers on which the court below acted in making such order on file in my office.

[SEAL.] In witness whereof, I have hereunto subscribed my name, and affixed my official seal this 24th day of December, A. D. 1863.

H. W. GENET, *Clerk.*

18 STATE OF NEW YORK:

At a court of appeals for the State of New York, held at the Capitol, in the city of Albany, on the twenty-second day of March, A. D. 1864.

Present: Hon. Hiram Denio, chief judge, presiding.

THE PEOPLE OF THE STATE OF NEW YORK, on the relation of the President, Directors and Company of the Bank of America, appellants.
against
THE BOARD OF COMMISSIONERS OF TAXES AND ASSESSMENTS FOR THE CITY AND COUNTY OF NEW YORK, respondents.

The appeal in this cause having been argued by Mr. Marshall S. Bidwell, of counsel for the plaintiffs, appellants, and by Mr. James T. Brady and Mr. John E. Develin, of counsel for the defendants, respondents, and due deliberation having been had thereon, it is ordered that so much of the judgment of the supreme court appealed from by the said plaintiffs, appellants, as awards costs to the defendants be, and the same is hereby, reversed, and that the said judgment be, and the same is hereby, in all other respects affirmed.

And the relators having claimed exemption under and by virtue of the second section of the act of Congress entitled "An act to authorize the issue of United States notes, and for the redemption or funding thereof, and for funding the floating debt of the United States," passed February 25th, 1862, and by virtue of the eighth section of the first article of the constitution of the United States, from the taxation mentioned in the record in this cause, on the ground that the amount of their capital stock, in that respect mentioned in such record, is invested in the public debt of the United States; and the validity of the authority claimed under the statute of the State of New York entitled "An act in relation to the taxation of moneyed corporations and associations," passed April 29th, 1863, to impose the tax mentioned in the said record being drawn in question, it is certified that the judgment of this court is against the relators, against such exemption, and in favor of the validity of such authority.

A copy. COR'S TEN BROECK, *Dep. Clerk.*

[SEAL.]

19 Supreme Court of the United States of America for the southern district of New York, in the second circuit.

THE PEOPLE OF THE STATE OF NEW YORK, on the relation of the President, Directors and Company of the Bank of America in the city of New York,
agst.
THE BOARD OF COMMISSIONERS OF TAXES AND ASSESSMENTS OF THE CITY AND COUNTY OF NEW YORK.

Know all men by these presents that we, James Punnett and William L. Jenkins, both of the city, county, and State of New York, are held and firmly bound unto the above-named the board of commissioners of taxes and assessments of the city and county of New York in the sum of five hundred dollars, to be paid to the said the commissioners of taxes and assessments of the city and county of New York, for the payment of which, well and and truly to be made, we bind ourselves and each of us, our and each of our

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heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated the thirtieth day of November, in the year of our Lord one thousand eight hundred and sixty-four.

20 Whereas the above-named the president, directors, and company of the Bank of America have prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled suit by the judges of the court of appeals of the State of New York:

Now, therefore, the condition of this obligation is such that if the above-named the president, directors, and company of the Bank of America shall prosecute their said writ of error to effect, and answer all damages and costs if they shall fail to make good their plea, then this obligation shall be void; otherwise, the same shall be and remain in full force and virtue.

J. PUNNETT. [L. S.]
WM. L. JENKINS. [L. S.]

Sealed and delivered, and taken and acknowledged, this 30th day of November, 1864, before me.

R. E. STILWELL,
U. S. Comm'r.

[U. S. int. rev. stamp, 5c, cancelled.]

UNITED STATES OF AMERICA,
Southern District of New York, ss:

James Punnett, being duly sworn, doth depose and say that he is one of the obligors in the foregoing bond named, and has executed the same; that he resides in the city of New York, in the southern district of New York;

21 that he is a freeholder, and is worth the sum of one thousand dollars over and above all his just debts and liabilities.

J. PUNNETT

Sworn before me the 30th day of Nov'r, 1864.

R. E. STILWELL,
U. S. Com'r.

[Stamp, 5c, cancelled.]

UNITED STATES OF AMERICA,
Southern District of New York, ss:

William L. Jenkins, being duly affirmed, doth depose and say that he is one of the obligors in the foregoing bond named, and has executed the same; that he resides in the city of New York, in the southern district of New York; is a freeholder, and is worth the sum of one thousand dollars over and above all his just debts and liabilities.

WM. L. JENKINS.

Sworn before me the 30th day of November, 1864.

R. E. STILWELL,
U. S. Com'r.

The within bond approved.
N. Y., Nov. 30, 1864.

S. NELSON.

21½ The United States o America to the board of commissioners of taxes and assessments of the city and county of New York:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday

of December next, pursuant to a writ of error filed in the clerk's office of the court of appeals of the State of New York, in a certain suit or proceeding wherein the people of the State of New York, on the relation of the president, directors, and company of the Bank of America are plaintiffs in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Dated New York, November 30, 1864. S. NELSON.

C. E. STRONG,
Att'y for Pl'ff in error.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

On this day of , in the year of our Lord 1864, before me, the subscriber, personally appeared , and makes oath that he delivered a true copy of the within citation to the .

Due service of within citation is hereby admitted.

New York, Nov. 30th, 1864.

JOHN E. DEVELIN, *Resp'ts' Att'y.*

22 STATE OF NEW YORK,
Court of Appeals, Clerk's Office.

I, Frederick A. Tallmadge, clerk of the court of appeals of the said State of New York, do hereby certify to the Supreme Court of the United States that the judgment record, writ of error, citation, and bond hereto annexed are true transcripts of their respective originals remaining on the files of my office in the above-entitled cause.

[SEAL.] In witness whereof, I have hereunto set my hand and affixed my official seal at the city of Albany, this sixth day of December, A. D. 1864.

COR'S TEN BROECK, *Dep. Clerk.*

Filed December 8, 1864.

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Wm. C. Bryant & Co., Printers, 41 Nassau Street, cor. Liberty, N. Y.

In the Supreme Court

OF THE UNITED STATES.

THE PEOPLE OF THE STATE OF NEW YORK, *ex rel.* THE BANK OF AMERICA,

vs.

THE COMMISSIONERS OF TAXES AND ASSESSMENTS FOR THE CITY AND COUNTY OF NEW YORK.

Abstract and Points on the Part of the Relators.

The Bank of America is a corporation in the city of New York. It rendered its statement, according to law, to the Tax Commissioners, on which the latter were to fix the sum on which the taxation of the bank was to be made. By this statement it appeared that the whole amount of its capital (except real estate used in its business) was invested in stocks, bonds, and securities of the United States, which the bank claimed to be exempt from taxation. The Tax Commissioners, however, determined that the bank was subject to assessment and taxation upon the value of its capital stock, without regard to the fact that such capital or any portion of it might be invested in the public stocks, debts, or bonds of the United States; and that such assessment was not made upon the public stocks or bonds

of the United States, but was made, pursuant to the laws of the State of New York, upon the capital stock of the bank, estimated at its just value, after making the exceptions and deductions required by the statutes of the State.

Thereupon a *certiorari* was issued from the Supreme Court of the State to the Tax Commissioners, according to law; and upon the return of it, the proceedings and determination of the Tax Commissioners were confirmed,

From that judgment the bank appealed to the Court of Appeals, by whom the judgment was affirmed.

The case comes now before this Court upon the return of a writ of error to the Court of Appeals.

Points.

I.

It is settled by the decisions of this Court that stocks and debts of the United States are exempt from State taxation. It is immaterial in what form the tax may be imposed; whether directly *eo nomine* on such stocks, &c., or whether on a fund of which they form a constituent part. The owner in all cases holds them free from such taxation.

McCulloch *v.* State of Maryland, 4 Wheat. R., 316.

Osborn *v.* U. S. Bank, 9 Id., 738.

Weston *v.* City Council of Charleston, 2 Pet. R., 449.

Bank of Commerce *v.* The City of New York, 2 Black's R., 620.

II.

This immunity is a privilege, not of the fund holders but of the Government of the United States, and is essential to

the free and full exercise of its constitutional power of raising money for the public safety and welfare, without obstruction or encumbrance. A liability of its stocks to State taxation would derogate from this power and would diminish their market value to the extent of any anticipated tax. Indeed, it would detract still further from such market value; because a capitalist must exact such additional sum as would, like a premium upon insurance, afford him indemnity against a greater rate or a possible increase of taxation. The very uncertainty of the amount of the tax which might be imposed would, therefore, aggravate the disadvantage to which the Government would be subject in negotiating its loans. The State could not gain more than the amount of the tax, but the Government might, and probably would, lose more than that amount.

The tax, therefore, if valid, must be in effect not only a tax upon the national Government, but one of a very oppressive character.

It must diminish its power to borrow money; it must interfere with its operations, and the exercise of its constitutional rights and duties; it would be incompatible with its independence and sovereignty; and it must increase the burthens of the people.

III.

It is immaterial with what motives, for what purposes, or in what form the tax may be laid. It is the *effect* that is to be regarded; not the manner or means of producing it. A State law which causes the obnoxious effect is unconstitutional. The test question is this: Does the law affect injuriously the power of the government of the nation to borrow money? Can that government borrow as readily and on as good terms as if the law did not exist? If not, then it is injurious to that government, and is incompatible with its supremacy and its sovereign rignts and powers; and it is, therefore, repugnant to the provisions of the Constitution, as expounded and declared by this Court.

IV.

This immunity is founded upon the highest considerations of public policy and safety. It is essential to the independence and sovereignty,—it may be to the very existence,—of the Government. It is, therefore, for the common benefit of all, and it is not to be narrowed by technical rules or by a strict construction.

It is a fundamental principle of our jurisprudence, and is to be applied, as it has uniformly been applied by this Court, in a comprehensive and liberal spirit.

Upon this principle it has been held that under a State law imposing a tax upon the capital stock of a bank, &c., such capital, so far as it consisted of, or was invested in United States stocks or securities, was exempt from State taxation.

The Bank of Commerce *v.* The City of New York, 2 Black's R., 620.

V.

Upon the same principles, the Act of the Legislature of New York, April 29th, 1863, imposing a tax upon a valuation equal to such a capital, is inoperative, so far as the capital is invested in, or consists of such stocks. The distinction between a tax upon such a capital and a tax upon a valuation equal to such capital, is merely verbal; in each case it is in fact a tax upon the bank, on account of, and in proportion to the amount of the capital; it is imposed not upon the thing named as the subject of taxation, but upon the person of whom it can be exacted; and accordingly it can be levied upon him and him alone, whether he does or does not continue to be the owner of such thing.

This distinction, being merely nominal or verbal, is in law no distinction at all, and the principle of exemption applies to one case as much as to the other. *Leges non verbis, sed rebus sunt impositæ.* In the language of this Court it may be asked, emphatically: "*Is the proposition*

to be maintained that the Constitution meant to prohibit names and not things?"

4 Pet., R., 433.

ADDITION TO POINT V.

If the Legislature of the State intended to impose the tax without regard to the kind of property in which the capital was invested, and resorted to this mode of imposing the tax, in order to avoid the operation of the principle established by the decision of the Supreme Court of the United States, it was a fraud upon the Constitution of the United States, and comes within the rule applicable to acts *in fraudem legis.*

Wood *vs.* Bolard, 8 Paige R., 556.
Spear *vs.* Wardell, 2 Barb. Ch. R., 299, 300.
S. C. 1 Coms. R., 144,

and it comes within the rule and maxim, that "whatever "is prohibited by law to be done directly, cannot legally "be effected by an indirect and circuitous contrivance."

Booth *vs.* Bank of England, 6 Bing. N. C., 415.

Quando aliquid prohibetur ex directo, prohibetur et per obliquum.

It may moreover be remarked, that it is evident the law of 1863 was intended as a substitute (so far as the banks are concerned) for the previous law; otherwise, a bank having its capital invested in other securities than stocks, &c., of the United States, would be subject to double taxation—*first*, under the old law, upon its capital; *secondly*, under the law of 1863, upon a valuation equal to its capital.

IV.

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If by a mere change in the phraseology or form of taxation the same object can be attained, then a great fundamental principle of the Constitution is literally rendered *vox et præterea nihil.*

In such a case, the exemption is practically a nullity; and the stocks, &c., will be subject to the same encumbrances and obstruction and the same disadvantage in the market as if they were liable directly and *eo nomine* to state taxation.

To such a result, the Court cannot come consistently with the great rule of construction, preeminently applicable to a Constitution, namely, that it should be construed according to its spirit, and in such a manner as to avoid the mischief to be remedied, and to advance the remedy.

This has been the uniform rule of this Court in similar or analogous cases. It is sufficient to cite, in proof of this, two or three cases.

Brown *v.* State of Maryland, 12 Wheat. R., 419.

Dobbins *v.* Erie Co., 16 Pet. R., 435.

Almy *v.* State of California, 24 How. R., 169.

VI.

It may moreover be remarked, that it is evident the law of 1863 was intended as a substitute (so far as the banks are concerned) for the previous law; otherwise, a bank having its capital invested in other securities than stocks, &c., of the United States, would be subject to double taxation—*first*, under the old law, upon its capital; *secondly*, under the law of 1863, upon a valuation equal to its capital.

VII.

It cannot be maintained that this is a tax upon the franchise or by way of license fee. Such is not the import of the law. A license fee always implies a condition that the party has his option, either to pay the fee, or to forbear the exercise of the profession, trade, &c.

And besides, a law imposing a tax upon the franchise or a charge by way of license fee in proportion to the property, would be open to the same objection as a tax upon such property; for instance, if the law exacted such a tax or license fee expressly in proportion to the United States stocks held by any one, it would be void upon the same principle, and for the same reason, as a tax upon such stocks: the effect would be the same. By parity of reasoning a tax upon its franchise or a charge of a license fee in proportion to the capital of the bank, is equally inoperative (so far as it is composed of U. S. stock) with a tax upon its capital.

The operations of the Government will in such a case be interfered with, its powers will be circumscribed and fettered, and its sovereignty and supremacy impaired, as really and as effectually as if the law had, in terms, imposed a tax or a penalty upon the issue of the stock by the Secretary of the Treasury.

VIII.

The nation is deeply interested in the question before the Court. It is really a question between a single State and the Government of the United States. What the former would gain, the latter would lose; for if the tax can be exacted, an equal or greater amount must be lost by the Government in the disposal of its stock. And a principle will be established which may paralyze the power of the Government.

It is true that the relators are the parties interested immediately in the result of this case. But, as they took the stocks upon the faith of their exemption from State taxation, upon terms based upon such exemption, they are entitled to the same protection and privileges as the Government would be.

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IX.

No unfavorable distinction should be made between them and an individual fundholder. On the contrary, if a distinction were made, it should be in their favor. Banks are great commercial agencies, to which citizens of all the States confide their surplus capital to be employed far and wide, and not merely within the limits of a particular State. A tax upon the banks of New York is, in fact although not in form, a tax upon citizens of other States, and not merely upon its own citizens; and if enforced, has a direct and palpable tendency to drive them away from the State, contrary to the genius and spirit of the Constitution.

X.

I. A State has little reason to complain of the immunity of the stocks and securities of the United States from State taxation. This immunity is for the common benefit of all. If a State tax could be imposed upon such stocks and securities, all would suffer to that extent; and in the end the State itself would lose as much as it gained, unless it gained something at the expense of other States. What one State would be willing that another State should have this unjust advantage? Would there not be a strife among the several States, each one struggling to secure the greatest advantage for itself, and would not the result be that the stocks would be loaded to an overwhelming degree by State taxation? It is really advantageous, therefore, to the States that this immunity should be enjoyed by the National Government.

II. Another consideration may be adduced to prove that the State has little reason to complain of this immunity. While the money of the bank remains in its hands it is, of course, liable to State taxation; and when it passes out of its hands to the Government, and is again disbursed, it is

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still taxed. The money is, therefore, not withdrawn from taxation, except during the short period it is held by the Government, who cannot afford to keep it idle in its hands. The State has, therefore, no other reason to complain than that it cannot put a double tax upon the money after it is loaned to the Government; that is, that it cannot tax the money twice as much after it is loaned as it could do previously. It is obvious from this consideration that, notwithstanding this immunity, the aggregate amount of taxes raised by the State will be about the same as if the money had not been loaned to the Government. And it may well be asked whether it would be reasonable or just for the State to increase—in fact, to double—the tax on the money, merely because it is loaned to the Government to assist in an hour of peril and extremity?

XI.

The Government may be entrusted with this prerogative without any fear that it will be abused. On the contrary, the legislation of Congress during the last session shows that there will be no unwillingness to waive it whenever it can properly be done.

XII.

On the whole, it is respectfully submitted that the judgment of the Court of Appeals should be reversed, with costs.

MARSHALL S. BIDWELL,
Of Counsel.